IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8602 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BAROT VARDHAJI HARCHANDJI

Appearance:

MR VB GHARANIA for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/08/1999

ORAL JUDGEMENT

1. This special civil application by the State of Gujarat through Secretary, Revenue Department, Gandhinagar is against the judgment of the Gujarat Revenue Tribunal, Ahmedabad dated 30th September, 1987 passed in Revision Application No. TEN.B.A. 1423/84.

2. The facts of the case are that in the Ceiling

Case No.715 of 1977 vide order dated 16-11-1983 the Mamlatdar and A.L.T., Tharad - Vav held that the applicant, the respondent herein, held 90 acres and 11 gunthas of land as surplus land. The matter was taken in appeal before the Deputy Collector concerned by the respondent. The Deputy Collector concerned under his order dated 4-8-1984 modified the order of the Mamlatdar and A.L.T. and declared 104 acres and 6 gunthas as surplus land with the respondent. This order has been challenged by the respondent before the Gujarat Revenue Tribunal at Ahmedabad and under the impugned judgment the same was allowed. Hence, this special civil application before this Court.

3. Learned counsel for the petitioner contended that the Tribunal has committed serious error of jurisdiction in not remanding the matter back to the Mamlatdar and A.L.T. for decision on the question raised by the respondent before it. The respondent raised the issue before the Tribunal that the land was of ancestral property in which his two brothers who were major on 1-4-1976 have also share and in case it would have been considered then with the respondent, no surplus land was available. Only on the basis of what the respondent stated, it could not have been accepted and the matter should have been remanded so that the petitioner could have an opportunity to produce the material to controvert that aspect.

4. I find sufficient merits in this contention. The Tribunal only on the basis of the evidence produced before it and as it was not challenged by the State, it has not considered it to be a fit case to remand the matter to Mamlatdar and A.L.T. for fresh decision. This approach is not correct for the reason that both the lower authorities have decided the matter in favour of the petitioner. In case the Tribunal considered that it was an ancestral property in which two brothers of the respondent have share then the matter should have been remanded to afford opportunity to the petitioner to produce the evidence to deny the case of the respondent. That has not been done. It is a matter where notice can be taken that all efforts are being made by the holders of the land to see that even if surplus land is with them it is not taken by the Government. In case this opportunity is given I fail to see how the respondent would have suffered. Secondly, it is a beneficial legislation and whatever surplus land comes to the Government it has to be given to the landless persons and keeping in view this aspect all opportunity has to be given to the State Government to oppose the case of the

respondent.

5. In the result, this special civil application succeeds and the same is allowed in part. The judgment of the Gujarat Revenue Tribunal, Ahmedabad in Revision Application No.TEN.B.A. 1423/84 dated 30th September, 1987 is quashed and set aside and the matter is remanded back to the Mamlatdar and A.L.T., Tharad-Vav to decide the same with reference to the points raised by the respondent before the Tribunal. As it is an old matter, the matter has to be decided expeditiously say within three months from the date of receipt of writ of this judgment after giving an opportunity to both the parties to submit their evidence etc.. Rule is made absolute accordingly with no order as to costs.

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